



FACT SHEET

The Military Commissions Act of 2006

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Five years ago, coordinated attacks against the U.S. homeland introduced the American people to a new enemy dedicated to destroying America and its ideals. These vicious attacks were the opening salvo in the war on terrorism. Instead of cowering in fear, brave American men and women in uniform took the fight directly to this new enemy in places like Afghanistan, Iraq, and other locations around the world.

H.R. 6166, the updated version of the Military Commissions Act of 2006, reflects the agreement reached among the House, Senate and White House to effectively and fairly prosecute terrorists, while also protecting American troops and intelligence agents fighting the Global War on Terror. The legislation, which is the product of thorough weekend negotiations to finalize the agreement reached last week, recognizes the ongoing nature of the war on terrorism and affords terrorists basic rights while ensuring American troops can continue to effectively fight terrorists.

Following are the major provisions included in the updated Military Commissions Act:

CREATES A NEW JUDICIAL SYSTEM TO PROSECUTE TERRORISTS

The Military Commissions Act creates a full and fair judicial system to ensure terrorists captured in the ongoing Global War on Terrorism are brought to justice. The Congressionally-authorized military commissions system established in this legislation fully conforms with Common Article 3 of the Geneva Conventions, as well as all applicable U.S. laws and international treaty obligations.

The legislation is narrowly tailored to prosecute illegal alien enemy combatants engaged in hostilities against the United States or its citizens. Accused terrorists can be tried for violating the laws of war, committing a hostile act against the United States, or purposefully and materially supporting terrorists engaged in a hostile act against the United States. The legislation also lists 28 specific crimes for which terrorists can be tried, including murder, attacking civilians or civilian property, pillaging, taking hostages, using protected people as shields, torture, cruel or inhuman treatment, mutilation, improperly using a flag of truce, intentionally mistreating a dead body, and rape.

Based on the Uniform Code of Military Justice, the Military Commissions Act establishes the procedures, rules, and legal framework for trying accused terrorists. Specific pre-trial procedures outlined

in the law mandate that terrorists must be given notice upon the swearing of charges. Compulsory self-incriminating statements are prohibited.

Additionally, the Military Commissions Act allows accused terrorists to obtain a civilian defense counsel, defense counsel is given a reasonable opportunity to obtain witnesses, and the U.S. government must give any exculpatory evidence to the defense counsel.

PROVIDES BASIC FAIRNESS IN PROSECUTIONS

Using rules and procedures from previous military commissions, international tribunals, and the Uniform Code of Military Justice, the Military Commissions Act provides basic fairness to allow terrorists the opportunity to mount a full defense. The following steps are taken to ensure maximum fairness for terrorists accused of crimes under this system:

- An independent military judge will preside over all proceedings of individual military commissions.
- The U.S. government must provide defense counsel to accused terrorists.
- Accused terrorists may represent themselves and are permitted to be present at all phases of the trial.
- No evidence may be presented to the jury that is not also provided to accused terrorists.
- Accused terrorists are permitted to present evidence in their defense, to cross-examine the witnesses who testify against them, and to respond to evidence admitted against them on the issue of guilt or innocence and for sentencing.
- Statements by terrorists obtained through torture are excluded. Congress and President Bush have made it clear through legislation and regulations that U.S. government personnel shall not engage in torture, cruel, or inhuman treatment of terrorists or detainees.
- Classified evidence is protected and is privileged from disclosure to accused terrorists—as well as the panel of jurists—if the disclosure of the information would be detrimental to national security. The legislation clearly states that intelligence sources, methods, or activities shall be protected, but the substantive findings will be admissible in an unclassified form, allowing the prosecution to present its best case while protecting classified information. The presiding military judge must find that the sources, methods, or activities by which the prosecution acquired the evidence are classified and the evidence is reliable.
- Two separate standards exist for statements allegedly obtained through coercion. Statements collected prior to enactment of the Detainee Treatment Act can be admitted only if the military judge finds that the totality of the circumstances renders the statement reliable, possessing sufficient probative value, and the interests of justice would best be served by the admission of the statement into evidence. Statements collected after enactment of the Detainee Treatment Act adds a third requirement that the interrogation methods used to obtain the statement do not violate the cruel, unusual, or inhumane treatment or punishment standard prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution.
- Hearsay evidence is admissible only if the information is reliable or has probative value.
- In capital cases, a military commission must have at least nine panelists and they must unanimously agree on a guilty verdict. The president has the final review.
- Guilty sentences are automatically referred to a new Court of Military Commissions Review and may be appealed to the Court of Appeals for the District of Columbia.

PROTECTS AMERICAN TROOPS ON THE BATTLEFIELD

The Military Commissions Act protects American troops and intelligence agents fighting terrorists in the ongoing Global War on Terrorism by ensuring their identities will not be revealed. Previous military commissions and international military tribunals were convened following the cessation of hostilities. At this time, however, America is moving to try terrorists while their comrades are engaged in hostile action against the men and women of America's military. The following steps have been taken to ensure the safety of American troops and agents on the battlefield:

- The U.S. government is allowed to present its case fully without compromising its intelligence sources or compromising military necessity.
- Battlefield appropriate rules, procedures, and standards regarding evidence are written in law to ensure American troops are not unduly burdened during combat.
- American troops are shielded from frivolous civil lawsuits brought by terrorists.
- U.S. government personnel engaged in authorized interrogations are protected.
- The Military Commissions Act amends the War Crimes Act to codify and define all serious violations of Common Article 3 of the Geneva Commissions.

SATISFIES INTERNATIONAL TREATY OBLIGATIONS AND APPLICABLE U.S. LAWS

The Military Commissions Act conforms with the United States' obligations to international treaties and all applicable U.S. laws, including laws banning torture and cruel and inhuman treatment of terrorists. The following steps have been taken to ensure military commissions satisfy America's international treaty obligations and applicable laws:

- Authorizes in law a regularly constituted court, affording all the necessary "judicial guarantees which are recognized as indispensable by civilized peoples" for purposes of Common Article 3 of the Geneva Conventions,
- Establishes that cruel, inhuman, or degrading treatment or punishment, as defined in the Detainee Treatment Act of 2005, fully satisfies the United States' obligations with respect to Common Article 3 of the Geneva Conventions, and
- Clarifies what is considered a war crime in United States law by codifying the offenses and crimes triable for serious violations of Common Article 3 of the Geneva Conventions.

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**House Armed Services Committee Communications Office
Duncan Hunter, Chairman**